(2018) 01 CHH CK 0136

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 602, 690 Of 2011

Gulmeer Ahamad Khan And Ors — APPELLANT

Vs

Binesh Kumar Nishad And Ors — RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2018) 01 CHH CK 0136

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : KPS Gandhi, BP Gupta, Sachin Singh Rajput

Final Decision : Disposed Of

Judgement

P. Sam Koshy, J

1. These two appeals arise out of same accident in claim case No.38/2010, decided on 03.03.2011 by the Motor Accident Claims Tribunal,

Rajnandgaon (CG). Vide the impugned award the Tribunal in an injury case has awarded compensation of Rs.1,88,900/- to the claimant along with

interest @ 6 percent per annum from the date of application. While passing the impugned award, the Tribunal had exonerated the insurance company

and had fastened the liability of payment of compensation upon the driver and the owner of the offending vehicle.

2. MAC No.690 of 2011 is an appeal filed by the claimant seeking enhancement of compensation. MAC No.602 of 2011 is an appeal by the owner

and driver challenging the liability part. For convenient sake we shall take the appeal of the driver and owner first.

3. Learned counsel appearing for the owner and driver submits that the vehicle i.e. Tempo bearing registration No. CG-07/ZA/1744 was duly insured

with the respondent-Bajaj Allianz General Insurance Co.Ltd.. The vehicle at the relevant point of time was being driven by Binesh Kumar and was

owned by Anil Kumar. The said driver Binesh Kumar had a valid license to drive Light Motor Vehicle and the vehicle involved was also a light motor

vehicle, and therefore, exoneration of the insurance company on the ground that driver had no endorsement to drive commercial vehicle is not proper

and legal and therefore the findings of the Tribunal deserves to be set aside and the liability should be shifted upon the insurance company.

4. Learned counsel for the insurance company submits that at the relevant point of time since the driver did not have a license to drive a commercial

vehicle, the findings of the Tribunal cannot be said to be bad in law. There was also a finding that the offending vehicle did not have a valid permit

from the competent authority to operate and for this reason also there is a clear breach of policy conditions as well as the provisions of Motor

Vehicles Act. Therefore, exoneration of insurance company is proper, legal and justified. He relied upon the decision of Supreme Court in case of

National Insurance Co. Ltd. Vs. Challa Bharathamma and Ors. 2004 (8) SCC 517.

5. A perusal of record would show that the insurance company in support of its contentions has examined two witnesses namely Pankaj Kumar, Law

Officer of the insurance company. Likewise, one Purshottam Singh was also examined as witness from the RTO office. So far as the ground that the

driver at the relevant point of time did not have a valid endorsement to drive commercial vehicle is no loner sustainable as the law is by now well

settled in the recent larger Bench decision of Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668 and

in the case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054, wherein it has been held that merely because there is no endorsement on the licence

of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Therefore,

the finding of the Tribunal to that extent stands set aside.

6. So far as the second issue of the vehicle not having valid permit is concerned, perusal of records would show that though the witness from RTO

was examined but the witness was not put any question as regards whether the vehicle had valid permit or not. Further, Pankaj Kumar, Law Officer,

from the insurance company, as is reflected from paragraph 16 of the award, has clearly admitted in his cross examination that there was no

document in his possession with which it could be established that the vehicle at the relevant point of time had a permit or not. It is by now well settled

position of law that it is always for the person who pleads has to prove his case. If the insurance company has pleaded that the vehicle did not have a

permit, it was the duty casted upon the insurance company to have substantiated its contention by leading cogent evidence. From the records, it

appears that though the insurance company has moved an application for production of document asking the owner and driver to produce permit, but

this by itself would not absolve the insurance company from its responsibility or the burden casted upon it.

7. As far as the judgment of Challa Bharathamma (Supra) is concerned, in the said judgment the Supreme Court has categorically held that the plea of

vehicle not having valid permit is a permissible plea which can be taken under Section 149 of the MV Act, but such plea as taken, has to be

conclusively proved by the insurance company. In the instant case, there is no such proof led by the insurance company with which the contentions

could be substantiated.

8. Given the facts and circumstances of the case, this court is of the opinion that the finding of the Tribunal in exonerating the insurance company does

not seem to be proper, legal and justified and the same deserves to be and is hereby set aside and it is held that it shall jointly and severally be upon the

owner, driver as well as the insurance company i.e. Bajaj Allianz General Insurance Co. Ltd. to pay the compensation awarded by the Tribunal.

9. The appeal filed by the owner and driver i.e. MAC No.602 of 2011 stands allowed.

10. So far as the appeal filed by the claimant is concerned, a perusal of records would show that the only injury received by the claimant for which

disability certificate was issued by the doctor was a Fracture on right tibia and also stiffness on right leg. Apart from this, there does not appear to be

any major injuries sustained by the claimant.

11. Considering the facts and circumstances of the case, this court is of the opinion that the amount of compensation awarded by the Tribunal does not

seem to be on the lower side in any manner, however, considering the nature of injuries as also the statement of Doctor examined before the Tribunal, this court is of the opinion that ends of justice would meet if the claimant is awarded an additional compensation of Rs.36,100/- making total

compensation payable at Rs.2,25,000/-.

12. The enhanced amount shall also carry same interest as has been awarded by the Tribunal.

13. Both the appeals thus stand allowed and disposed of. Consequently, the liability of payment of compensation stands shifted upon the insurance

company i.e. Bajaj Allianz General Insurance Co. Ltd.

